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ONE HUNDRED NINTH CONGRESS

# Congress of the United States

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April 25, 2005

The Honorable Alberto Gonzales  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania, NW  
Washington, DC 20530

Dear Mr. Attorney General:

We write to bring to your attention credible and troubling reports of police misconduct and perjury in connection with the arrests and prosecution of demonstrators at last year's Republican National Convention in New York City. We believe these reports call for immediate federal scrutiny by the Justice Department as criminal deprivations of rights under color of law<sup>1</sup> and civil violations of the police pattern and practice laws.<sup>2</sup>

During the four-day gathering of the Convention last summer, New York City police arrested and detained thousands of demonstrators. Since the time of the Convention, 91 percent of the 1,670 cases brought against the demonstrators have ended with either the charges dismissed or with a verdict of not guilty after trial. Both the prosecutors and defense lawyers in the cases have used videotape evidence recorded by cameras by private citizens, volunteer observers and the police. In approximately 400 of these cases, video recordings affirmed that the peaceful protestors had not committed any crime and in fact, had been wrongly accused as a result of police perjury, the tampering of evidence, or other deception.

For example, the *New York Times* recently revealed the following:<sup>3</sup>

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<sup>1</sup>18 U.S.C. § 242.

<sup>2</sup>42 U.S.C. § 14141.

<sup>3</sup>Jim Dwyer, *Videos Challenge Hundreds of Convention Arrests*, N.Y. TIMES, Apr. 12, 2005, at A1.

- An officer testified in December, “We picked him [the demonstrator] up and we carried him while he squirmed and screamed. . . . I had one of his legs because he was kicking and refusing to walk on his own.” The prosecutor abruptly dropped the charges in the case when the defense produced a videotape depicting the protestor plainly walking under his own power down the steps of the New York Public Library, contradicting the account of the officer, who was nowhere in the picture. Nor was the officer present in the arrests of four other people at the library against whom he signed complaints.
- In one case, there were two versions of the same police tape. The tape to be used as evidence by the prosecution had been edited in two spots, removing images that showed the protestor behaving peacefully. When given a more complete version of the tape, prosecutors immediately dropped the charges and said that a technician had cut the material by mistake.
- In a large number of cases, videotapes demonstrated that the protestors had followed the instructions of senior officers to walk down certain streets, only to have another official order their arrests.

Importantly, neither the police nor prosecutors have denied these facts.

This conduct could implicate serious criminal and civil provisions of federal civil rights laws. Section 242 of title 18, United States Code, makes it a federal criminal offense to deprive someone of their constitutional rights under color of law. More specifically, a person acting under color of law, such as a law enforcement officer or prosecutor, cannot willfully deprive a person of their constitutional right against unreasonable searches, right to due process, or right to a fair trial. Penalties for violations of section 242 include a fine and imprisonment for up to one year, or both. In the present case, New York police officers and prosecutors may have willfully and knowingly offered false testimony and falsified evidence in violation of these rights.

Second, section 14141 of title 42, United States Code, establishes a civil cause of action for patterns and practices of police civil rights violations. To bring a case against such abuses, section 14141 requires that the Justice Department demonstrate that a municipality or police department has engaged in “a pattern or practice of conduct by law enforcement officers . . . that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.” Section 14141 gives the Justice Department the power to issue injunctions against police departments repeatedly engaging in misconduct. In this case, New York law enforcement may have engaged in a pattern of permitting and possibly encouraging perjury and evidence tampering, violating defendants’ rights against unreasonable searches and seizures under the Fourth Amendment, to due process under the Fifth Amendment, and to fair trials under the Sixth Amendment.

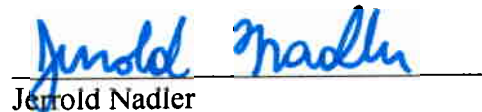
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The conduct of the New York City Police Department and prosecutors warrants your immediate attention and investigation, particularly since videotapes bolstered the prosecution's case in a number of the 162 convictions obtained to date.

Thank you for your attention to this matter. Please reply through Perry Apelbaum or Ted Kalo of the Judiciary Committee staff, 2142 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-6504; fax: 202-225-4423).

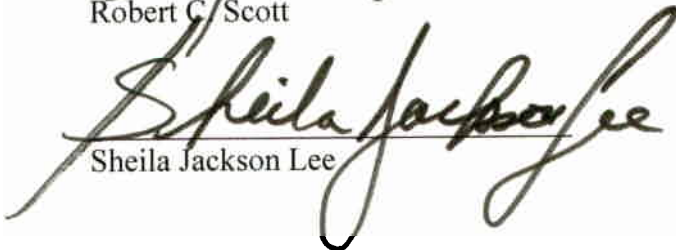
Sincerely,

  
John Conyers, Jr.  
Ranking Member

  
Jerrold Nadler

  
Robert C. Scott

  
Melvin Watt

  
Sheila Jackson Lee

  
Linda Sánchez

cc: Hon. William E. Moschella  
Hon. F. James Sensenbrenner, Jr.